STAGNETTO and others v ABRINES and others

Privy Council
Lord Cohen, Lord Guest, Lord Pearce.

Settled land — sale by tenants for life — interest free loan by purchaser to tenants for life — whether lack of good faith — Settled Land Act 1882, ss. 3 (1), 4 (1), 53 and 54.

The tenants for life of settled land sold it against the wishes of the remaindermen and at the same time received an interest free loan from the purchaser. The tenants for life were financially seriously embarrassed at the time. On an application to set aside the sale, the Chief Justice held that the tenants for life had failed to obtain the best price that could have been obtained, as the purchaser would have been prepared to pay the amount of the loan in addition to the purchase price, that they were induced by the loan to enter into the sale and that the purchaser had not acted in good faith. He allowed the application. The executors of the purchaser, who had died, appealed.

Held: (i) The loan must have been a substantial inducement to make the sale.

(ii) The inference that the purchaser would have been prepared to add the amount of the loan to the purchase price was properly drawn.

(iii) The evidence raised an inference that the purchaser connived with the tenants for life in offering them an inducement to sell to him.

Cases referred to in the judgment.

Chandler v Bradley, [1897] 1 Ch. 320.
Vatcher v Paull, [1915] A.C. 373.
Fletcher v Collis, [1905] 2 Ch. 24.

Appeal

This was an appeal from an order of the Supreme Court setting aside a sale by tenants for life of settled land and containing other consequential provisions.

25 July 1962: The following judgment was delivered—

This is an appeal by the defendants from an order made against them by Flaxman C.J. at Gibraltar setting aside a contract of sale and a conveyance whereby they purchased from the tenants for life under the trusts of a will certain property in Gibraltar called the Emporium. The tenants for life sold the property for 300,000 pesetas (£6,817) by virtue of their powers under s. 3(1) of the Settled Land Act 1882, which applies in Gibraltar. In so doing they were trustees for the remaindermen (s. 53) and had a duty to obtain the best price that could be obtained (s. 4(1)). The learned Chief Justice held that they had failed to obtain the best price because at the time of the sale the purchaser lent free of interest to the tenants for life a sum of 25,000 pesetas (£568). He concluded that the purchaser would have been prepared to pay the sum of 25,000 pesetas in addition to the 300,000 pesetas as the price of the property; and therefore 300,000 pesetas was not the best price which could be obtained. Even so, the purchaser would be protected by s. 54 if he had dealt in good faith. The Chief Justice found however that the purchaser connived with the tenants for life in allowing them to obtain the advantage of the loan at the expense of the remaindermen. He therefore set aside the contract and conveyance and gave consequential relief. The appellants contend that three findings, each of which was necessary to his decision, were not justified by the evidence. First it is argued, the Chief Justice should not have found that the purchaser would have been willing to go beyond the price of 300,000 pesetas; secondly he should not have found that the tenants for life were induced by the loan to enter into the sale at that price; and, thirdly he should not have found that the purchaser was aware that the tenants for life were being induced by the loan.

The first and third were findings of fact but they were matters of inference since there was no direct evidence in support of them. The second was a finding of fact depending primarily on the evidence of the surviving life tenant Rosa Abrines.

No interest was paid or claimed on the loan, and the principal was never repaid. At the trial the plaintiffs contended that it was a gift or a bribe under the outward semblance of a loan. But the tenants for life signed a bond to repay it and there was some evidence indicating that it was a loan. The Chief Justice decided, as he was entitled to do, that it was a loan. The plaintiffs also contended and called evidence to show that the then current value of the property exceeded the purchase price, but the Chief Justice did not accept that contention as proved. He relied solely on the loan as establishing that the best price was not obtained.

The tenants for life were two sisters who occupied a flat on an upper floor of the property. They were embarrassed by debts. Among their principal creditors was a grocery business on the ground floor of the property. The senior partner in that business was Lewis Stagnetto. He agreed to buy the freehold of the property from the tenants for life, and on 27 April 1932 the

contract of sale was signed. At some time either on or before or after that date Lewis Stagnetto also agreed to make the loan of 25,000 pesetas to the tenants for life in order that they might pay off their creditors. Before a conveyance was signed Lewis Stagnetto died and the defendants became executors of his estate. They carried out his obligations, completed the purchase and executed the conveyance on 21 July 1932. At the same time they paid over the 25,000 pesetas in return for a bond signed by the tenants for life.

At the time when Lewis Stagnetto agreed to purchase, Mr. Isola was acting as lawyer both for the tenants for life and also for the trustees of the settlement who were two gentlemen of high repute. Mr. Isola drew up the contract of 27 April 1932, acting for the purchaser as well as the vendors. Shortly afterwards the tenants for life became dissatisfied with the contract and at Mr. Isola's suggestion employed another lawyer who received the proceeds of the loan when it was paid and distributed them to the creditors. The remaindermen raised objections to the sale without success on the ground that the price was too low. They were unaware of the loan.

The Chief Justice heard evidence from Rosa Abrines, the survivor of the two life tenants. Her evidence differed widely from the pleadings in some respects, it was vague and in places contradictory. The Chief Justice said of her:—

> "This lady is now 86 years of age, and, not unnaturally her recollection of the events of 1932, and even of those of more recent date, is imperfect. Within this limitation I believe that she did her best, in evidence, to give a truthful version of her transactions with the late Lewis Stagnetto, and one point that appears to be clear in her mind is that the acceptance of the payment of 25,000 pesetas, and the agreement to sell the property, were to relieve the burden of debt which was pressing upon her sister and herself. Certainly there are inconsistencies in her evidence, but on that point she is quite unshaken. It also seems clear from her evidence that from the outset, she and her sister had doubts about the propriety of the transaction, a doubt which has been on her conscience in recent years, and which she at last confided to her cousin, the plaintiff."

The Chief Justice came to that conclusion after hearing and seeing the witness and after having had the benefit of Mr. Arnold's forceful arguments. It is not possible for their Lordships to take a different view on appeal. Moreover on the evidence as a whole it seems that the sum paid to the tenants for life in their embarrassed financial condition must have been a substantial inducement to make the sale which had no other advantage for them since the purchase price would go as capital for the benefit of the remaindermen and there is no evidence that the income of the tenants for life would be increased thereby to an extent more than commensurate with the loss to them of their rent free flat.

The question whether the Chief Justice was entitled to find that the purchaser would have been prepared to add the loan to the purchase price is more difficult. Mr. Arnold concedes that, had it been a gift and not a loan,

the Chief Justice's view was clearly right. But he argues that Lewis Stagnetto might be prepared to lend 25,000 pesetas albeit with only a speculative chance of repayment, when he would not be prepared to pay that sum without any hope of return. In truth the chances of repayment were not great. Since 1923 the tenants for life had owed Lewis Stagnetto and his son £1,000 which has never been repaid. And though there is some evidence from Mr. Isola that Lewis Stagnetto before his death had arranged for payment of interest on the 25,000 pesetas, the final arrangements by his executors made no provision for interest. Nor was repayment ever demanded or obtained. The Chief Justice having referred to the observations of Stirling J. in *Chandler v Bradley* [1] said

> "I think this criterion is as applicable to a loan as to a gift, particularly to a loan made in the circumstances shown in this case where it is barely distinguishable from a gift. Unless Lewis Stagnetto was inspired by purely charitable motives, which may be doubted, in agreeing to pay these ladies a sum between £500 and £600 an amount out of all proportion to the small interest-free credits he customarily allowed them, it must surely mean that to acquire the premises he was prepared to pay that figure in excess of the formally agreed figure."

Their Lordships feel unable to say that the judge was not entitled to reach that conclusion after hearing all the evidence.

The circumstances in which a loan could properly be treated as a side payment which showed that a purchaser would have been prepared to pay a higher purchase price than that which was in fact paid must be rare. The circumstances of this case were, however, very unusual. It is plain that the tenants for life were seriously embarrassed and would not have sold the property without the inducement of the loan. It is plain that the purchaser knew this. Moreover no interest was charged although the tenants for life were most unsatisfactory borrowers and there was clearly little, if any, hope of repayment. Their Lordships take the view that the Chief Justice could properly draw the inference that the purchaser would have been prepared to add the amount of the loan to the purchase price.

There remains the question of Lewis Stagnetto's good faith.

Since it was he who arranged the transaction before he died, it is his state of mind that has to be considered. To obtain the protection of s. 54 it must be shown that he acted in good faith. On the other hand a presumption arises in his favour from the court's reluctance to draw inferences against the integrity of persons long since dead and unable to defend themselves, *Vatcher v Paull* [2]. The Chief Justice did not decide the matter on presumptions, but dealt with it on the basis that it was for the plaintiffs to show that Lewis Stagnetto acted in bad faith. He said,

> "The result was that the tenants for life obtained a personal advantage to the detriment of the estate and the best price required by s. 4(1) of the Settled Land Act was not obtained. In this Lewis Stagnetto connived and the defendants are not afforded the protection given by s. 54 of the Act to purchasers acting in good faith".

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2 [1915] A.C. 373.

Later he said

> "But here I feel that there is more than suspicion, and the evidence establishes not merely on a balance of probability but beyond reasonable doubt that both the Misses Abrines and Lewis Stagnetto contravened, even if unwittingly, the rule of equity that a person in a fiduciary position may not be swayed by personal interest to the prejudice of those it is his duty to protect".

It is impossible to accept the argument that the transactions of purchase and loan were not proved to be connected. All the evidence points to a connection. Moreover in 1923 the tenants for life extended the lease of the premises under which the Stagnettos held to a term of 21 years contemporaneously with a loan agreement by which Lewis Stagnetto and his son lent to the tenants for life £1,000. It must have been clear to Lewis Stagnetto that the ladies in their embarrassed financial condition were influenced by the prospect of a loan which would extricate them from their present difficulties. The fact that reputable trustees knew of the loan agreement tells in favour of good faith. On the other hand the evidence of Rosa Abrines shows that the loan of 25,000 pesetas was concealed from the remaindermen who were objecting to the sale. There was evidence from which the inference could properly be drawn that Lewis Stagnetto was conniving with the tenants for life in offering them an inducement to sell to him and that he was not acting in good faith.

Mr. Arnold rightly contended that the order made was not satisfactory in form. An order was made for accounts of rent and mesne profits, although no order was made as to any payment in respect of such account. Any accounts of rent and mesne profits over the past thirty years would be difficult and expensive. The only recipient for such profits would be Rosa Abrines who as tenant for life would have been entitled to the profits had the sale not taken place. Whatever steps be taken to procure restitutio in integrum as between the plaintiffs and defendants, Rosa Abrines has no equity as against the defendants since she was herself the person who committed the breach of trust (see the observations in *Fletcher v Collis* [1]). Therefore she is not entitled to any profits from the property either in the future or the past. On the other hand she must clearly be entitled to the annual interest from the purchase price. But when the property has been reconveyed the trustees will no longer have the purchase price in their hands. It has been agreed between the parties that the matter can best be solved by delaying the reconveyance until the death of Rosa Abrines, and on that basis they have agreed a form of order of which their Lordships approve.

(The form of order was then set out and an order made as regards costs.)

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1 [1905] 2 Ch. 24.